Prison Exit Samples as a Source for Indicators of Pretrial Detention

HARVARD Kennedy School
Program in Criminal Justice Policy and Management

indicators in development
safety and justice

April 2011

Prison Exit Samples as a Source for Indicators of Pretrial Detention

Todd Foglesong and Christopher E. Stone

With funding from the United Kingdom's Department for International Development, (DFID), the Program in Criminal Justice Policy and Management (PCJ) at the Harvard Kennedy School has been supporting state officials and civil society organizations in Jamaica, Sierra Leone, and Nigeria to develop and use their own indicators to spark, reinforce, and communicate progress toward strategic goals in justice and safety. In 2010, PCJ began collaborating with officials in Papua New Guinea (PNG), extending existing efforts in the law and justice sector funded by the Australian Government Aid Program (AusAID).

The aim of the project is to equip government and civil society organizations with the skills and experience to design their own indicators, routinely assess those indicators, and use them to drive meaningful reform in the justice sector. Building this capacity is a long-term undertaking, for the desire for indicators and the skill in their construction must permeate the organizational culture in governmental and non-governmental bodies. It is also a fluid process: indicators serve ambitions, policies, governments, and staffs that inevitably change over time.

The prototype indicators developed in this project are different from the indicators in international systems created in the Global North for use in the Global South. They start by finding successes, however modest, and strengthen norms and standards that emerge in the course of reviewing local practices. They also perform different kinds of development work: They support domestic ambitions for justice and safety, reinforce management operations in government, and align the work of individual agencies with sector-wide goals. At the same time, these and other examples of country-led indicator development complement the growing number of globally conceived indicator projects by grounding the measurement culture of international development in local customs, and by articulating domestic sources of legitimacy for the standards implicit in the norms in global indicator projects.

UKaid
from the Department for International Development

Australian Government
AusAID

Many governments, civil society organizations, and international development agencies today seek to limit the use of pretrial detention in criminal justice. Motivations vary. Some believe that pretrial detention is ordered indiscriminately and employed for unreasonably long periods; others are concerned with the conditions of confinement and the burdens detention places on families; still others worry about the criminogenic effects of pretrial incarceration. But whatever the motive to limit the use of pretrial detention, it is difficult to imagine the effort succeeding without a good indicator of the extent of its use. Such an indicator has proven surprisingly elusive in countries at every income level.

Indeed, it is possible that the effort to reduce pretrial detention in developing countries may actually be hindered by the indicator most commonly used there: the proportion of prison inmates on any given day that is not sentenced. This paper describes some of the flaws with this and other indicators, and shows how domestic governments and their development partners can use a basic and better indicator—the median duration of detention—as a catalyst for change. The median number of days in detention is a simple measure that domesticates a complex problem, making it susceptible to reform, whether used alone or in a basket of indicators. It also helps government officials align remedial strategies with existing systems of accountability for improvements in justice and safety.

This paper demonstrates a simple and inexpensive way of developing this indicator – by obtaining administrative data already collected in most prisons and jails about the people who leave detention each month. Everywhere in the world, some number of detainees "exit" each month: some released to continue awaiting trial at liberty, others released at the end of their cases without a prison sentence, and still others whose pretrial detention has been

Figure 1. Pretrial Detention Indicators for Spain, Various Sources Compared

Source	Date	Number of pre-trial detainees	Pre-trial detainees as a percentage of the total prison population	Pre-trial detention rate per 100,000
ICPS	26-Oct-07	15,956	23.9%	35
SPACE 1 2007: Spain	1-Sep-07	14,522	25.4%	32.1
SPACE 1 2007: Catalonia	31-Dec-07	2,134	22.7%	29.6
National Statistics	2006	15,065	23.5%	34

Adapted from *Pre-Trial Detention in the European Union*, Chapter 26: Spain, Table 20, page 880. The SPACE data are reported separately for Catalonia and Spain. The authors of the chapter speculate that the ICPS data are calculated from combining the Spanish and Catalonian prison data, but relying on the residential population of Spain without Catalonia. Other differences in the figures, other than the dates on which they are based, are explained by slight differences in the definition of pretrial detention.

changed to a sentence of incarceration following a criminal conviction. Virtually every prison and jail in the world records the dates of these "exits" whether they are actual releases or merely the reclassification of a pretrial detainee as a sentenced prisoner. Only these administrative data can generate an accurate measure of the duration of detention. Interviews with detainees after their release are unreliable and data on the length of detention of all detainees on a particular date measure the duration of detention before it is complete.

The prison exit data are not a panacea. If the duration of detention is exceptionally long, the data will only tell you how long detentions last for people originally detained many months ago. It also takes a real effort to establish the kind of rapport and routines with prison officials that facilitate access to the records. But prison exit samples can generate a reliable measure of the duration of detention for virtually any justice system in the world with existing information and minimal additional resources. Moreover, while a justice system in the midst of major reform may want to collect these data continuously, it will often be enough to collect the data for only a few sample months each year, comparing the same months year-to-year to measure progress.

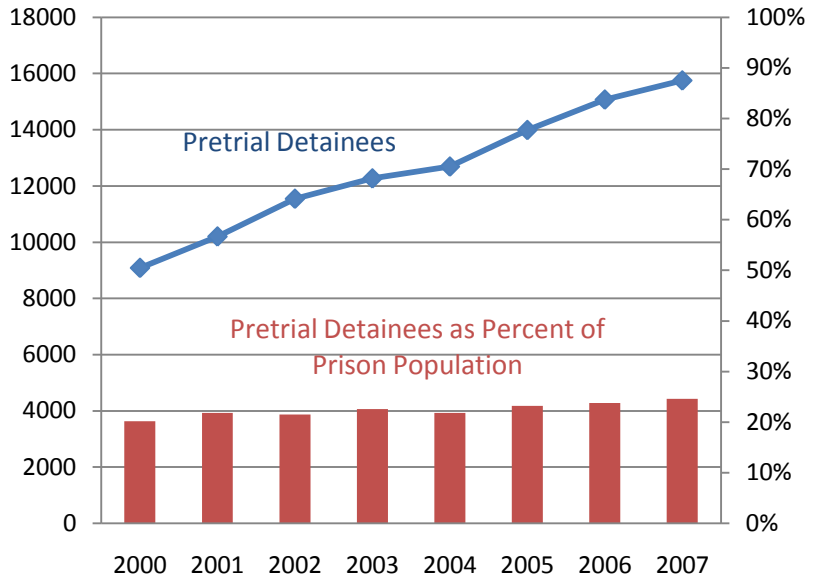
Problems with Population Percentages

Most justice ministries, development agencies, and non-governmental organizations working internationally to ameliorate the conditions and consequences of incarceration rely on the number of people awaiting trial in prison (un-convicted or un-sentenced) on any given day as the basic building block for two standard indicators of the extent of pretrial detention. To create the first indicator, that one-day pretrial population number is divided by the total incarcerated population (sentenced and un-sentenced) on that day, producing the *percentage of the prison population held pretrial*. To create the other standard indicator, the same one-day pretrial population is divided by the residential population of the country, producing the *rate of pretrial detention per 100,000 population*.

We can see this process at work in a recent review of pretrial detention in Europe, commissioned by the European Union.[1] In the chapter on Spain, for example, the review of available statistics from national and international sources on pretrial

[1] A.M. van Kalmthout, M.M. Knapen, C. Morgenstern (eds.), *Pre-trial Detention in the European Union: An Analysis of Minimum Standards in Pre-trial Detention and the Grounds for Regular Review in the Member States of the EU* (Wolf Legal Publishers, 2009).

Figure 2. Number of Pretrial Detainees and their Percentage of the Prison Population in Spain, 2000-2007



Adapted from *Pre-Trial Detention in the European Union*, Chapter 26: Spain: Figures 1 and 2, pages 870-71.

detention (*prisión provisional* and *prisión preventiva*) focuses almost exclusively on population numbers.[2] In its summary table (reproduced in Figure 1), the report compares the indicators produced by an NGO (the International Center for Prison Studies), the Council of Europe (through its SPACE surveys), and the national government (the Spanish National Statistics Institute).

There are at least three problems with this way of measuring pretrial detention if the goal of such measurement is to enable its reduction. First, the percentage of prison inmates that is un-sentenced can be insensitive to significant changes in the numbers of detainees. We can see this problem in the Spanish example, where the numbers of pretrial detainees climbed by 73 percent from 2000 to 2007, a substantial increase, but the indicator measuring pretrial detainees as a percentage of the prison population barely registered a change, as shown in Figure 2). The percentage indicator failed to register the change because the number of sentenced prisoners was increasing for other reasons in this same period.

Second, neither the percentage nor the rate of pretrial detention based on the population on a single day focuses attention on the work of any particular government department or function. A simultaneous increase in both of the two indicators could, in theory, suggest a deterioration in the ability of prosecutors, judges, and courtroom professionals to move criminal cases fairly and efficiently to resolution, swelling the numbers of accused persons languishing in detention; but the same increase in both indicators could be consistent with steady, reasonable performance by the courts while the police increased dramatically the number of apprehensions of suspects, or the rate of serious crime itself increased. Judges and prosecutors therefore might easily dispute that changes in these indicators are their responsibility, or they may feel impotent to bring them down in a context of rising crime. These indicators, in short, neither strengthen nor reward existing systems of legal administration.

Third, international comparisons on these indicators tend to contradict one another, hiding as much as

[2] *Pre-Trial Detention in the European Union*, Chapter 26, available at http://ec.europa.eu/justice/doc_centre/criminal/procedural/doc/chapter_26_spain_en.pdf (accessed 10 April 2011).

Figure 3. Two Indicators of Pretrial Detention, Selected Countries, 2009

	Percent Prisoners Un-sentenced
Liberia	97%
Bangladesh	69%
Nigeria	**65%**
Turkey	51%
Sierra Leone	49%
Brazil	37%
Papua New Guinea	31%
South Africa	30%
Australia	22%
United States	21%
Russia	16%
Jamaica	15%
UK	15%

	Detainees per 100,000 population
United States	158
South Africa	97
Russia	93
Brazil	90
Turkey	84
Liberia	39
Bangladesh	35
Australia	29
Jamaica	26
UK	23
Papua New Guinea	21
Sierra Leone	20
Nigeria	**19**

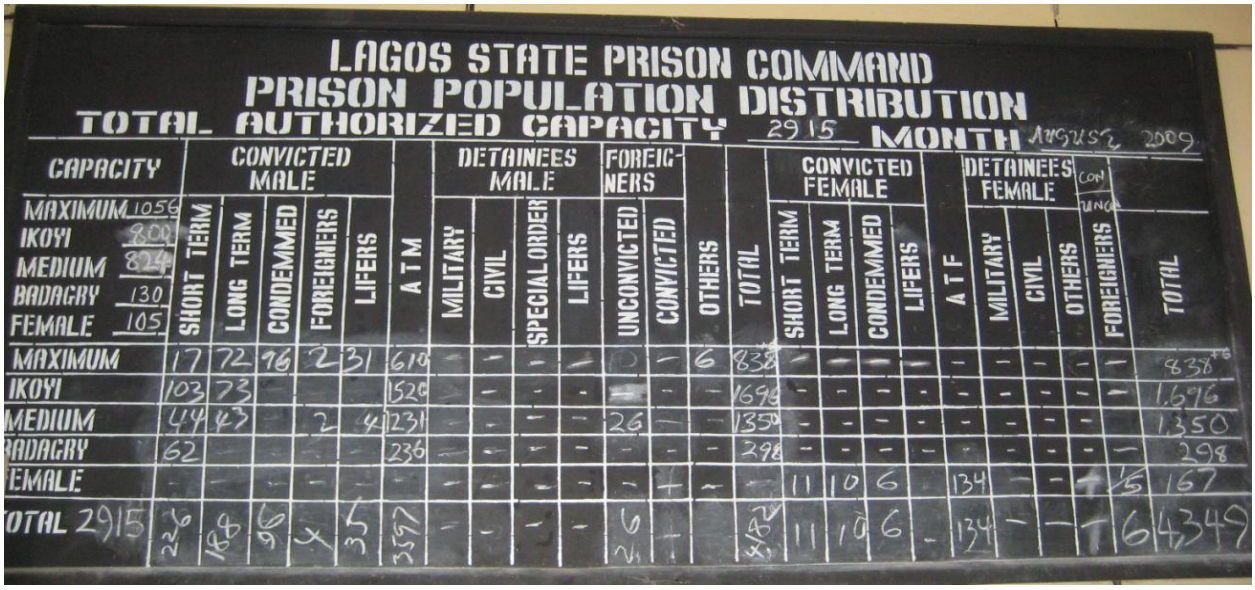
Data are from the 2009 World Prison Brief, produced by the International Centre for Prison Studies and available at http://www.prisonstudies.org.

they reveal. Countries such as the United States that appear to have relatively low percentages of their prisoners held in pretrial detention might be masking their heavy use of pretrial detention by sentencing many offenders to very long prison terms. On the other hand, countries, such as Nigeria, that appear to have relatively low per capita rates of pretrial detention, may be masking broken systems of judicial administration in urban areas because their per capita rates are deflated by their very large rural populations. These distortions of international comparisons are evident in the two rankings in Figure 3, each based on the same one-day pretrial population data.

Underlying these difficulties is a subtle legal and philosophical problem with this indicator. By itself, even a lot of pretrial detention might not be unjust. If a society has a relatively high rate of crime, apprehends its many offenders effectively, holds them briefly, and then relies principally on sentences other than prison, it would have a high percentage of its prisoners in pretrial detention at any one time and a relatively high rate of pretrial detention per capita, but the actual use of pretrial detention might be quite reasonable. Pretrial detention is unjust when it is imposed on people accused of trivial crimes, used without even minimal evidence of guilt, entails inhumane conditions of detention, or lasts excessively long. Indeed, prolonged pretrial detention may be the worst of these, for it is offensive to the rule of law in its own right while exacerbating all other forms of pretrial injustice: the over-punishment of trivial offenses, detention without evidence, and inhumane conditions of confinement. Counting the number of people in pretrial detention on any day and comparing these with either the prison population or the national population can capture these forms of injustice at best only indirectly, and may not measure them at all.

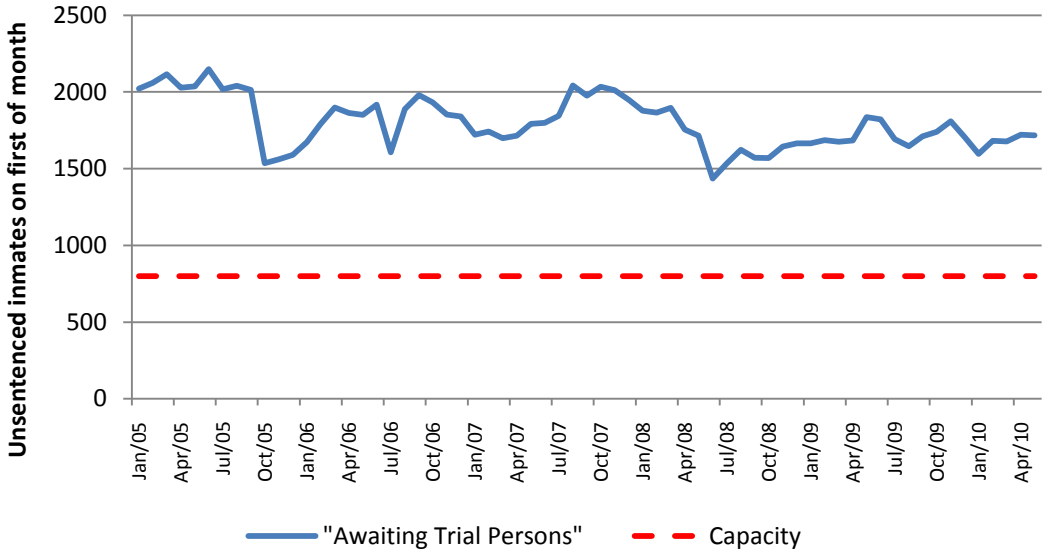
What, then, explains the attraction of volume indicators, and especially the percentage of prisoners in pretrial detention? The chief virtue of these measures is the ease with which they can be generated by prison officials. Nearly all prison officials distinguish and regularly report the number of inmates in their custody that are sentenced and un-sentenced. The Controller of Prisons in Lagos State, Nigeria, for instance, keeps track of the number of inmates by legal status in each facility with monthly updates on a chalkboard, as shown in

Figure 4. Inmate Population Tracking Device, Commissioner of Prisons, Lagos, Nigeria



the image in Figure 4. It is thus easy to collect these data from a country's prisons, divide the pretrial detainees by the total prison population, and report the percentage. Yet for the all its ease of calculation, this indicator may distract officials and donors from important signs of progress. Even studying the raw numbers of pretrial detainees would be an improvement. For example, in Lagos, Nigeria, where prison crowding is extreme, especially in facilities such as Ikoyi Prison that are used principally for awaiting trial male prisoners ("ATM" in Figure 4), the proportion of un-sentenced inmates has held steady for the past five years. And yet, in a reversal of the situation in Spain and as Figure 5 shows, there was a 24 percent decline in the total *number of* un-sentenced inmates in this same period – a

Figure 5. Pretrial Detainees, Ikoyi Prison, Lagos, Nigeria



Source: Warden of Ikoyi Prison, "Daily State Book."

remarkable reduction for any justice system, with benefits for guards and detainees and their families alike. This improvement went largely unnoticed, however, in part because of attention to the percentage of prisoners held pretrial. When, in 2010, the Director of Public Prosecutions saw the chart in Figure 5 at an interagency meeting in Lagos, she exclaimed: "now that we see that things can improve, it makes us want to shoot for the moon."

The raw *number* of un-sentenced inmates in prison on any given day may have more promise as an indicator than the *percentage* of inmates not yet tried or sentenced, for at least its changes are all related to the administration of pretrial justice. Yet an indicator of the *duration* of pretrial detention would measure forthrightly what these *volume* indicators hint at only indirectly. Lengthy pretrial detention is itself an injustice and it exacerbates the other injustices that may accompany any detention. Moreover, a measure of the duration of detention can help judges, prosecutors, and other court professionals develop techniques to reduce the time that suspects spend in detention without compromising other principles of justice.

There are two steps required in the development of an indicator of the duration of detention. First, one must collect data on the duration of each detention: the number of days elapsed between the person's arrival in detention and the person's release or sentencing. Second, one must analyze the data calculating either an average (the mean) or the median period of detention, examining the distribution of cases at the extremes (very long periods of detention and very short ones), and disaggregating the data to identify opportunities to achieve substantial improvements through focused work on some sub-group of detainees. The choice of indicators is heavily contextual, guided as much by the particular authority of the officials or organizations seeking reform as by the nature of the problems evident in the data.

The remainder of this paper addresses both steps in this process in low and middle-income countries, using Nigeria as our principal example. The same principles apply in high-income countries, but the collection of the raw data is often easier when more administrative data is automated, and the choice of indicator more straightforward when the authority of the officials involved is more direct. We focus, in short, on an especially difficult case, delving down into the details to make the general lessons explicit.

Measuring the Duration of Detention

The conventional wisdom about pretrial detention in Nigeria and many other developing countries, too, is that it is extremely long for all types of defendants. Some published reports give the impression that, on average, defendants in Nigeria spend years in custody before trial.[3] The practice of detaining suspects in police lock-ups for unspecified periods of time on "holding charges" contributes to this impression.[4] But no one knows how long detention lasts. Notwithstanding the impressions of people who administer criminal justice, there is little evidence and almost no systematic data reported about the duration of detention for suspects remanded into custody before trial. (This is not just a problem in low and middle-income countries. The comprehensive report on Spain discussed earlier contains no data on the duration of pretrial detention there.)

We asked the Lagos State Attorney General, Solicitor General, Commissioner of Police, and Commissioner of Prisons if they knew or had any hard data on the duration of detention. Each replied "no." The Warden at Ikoyi Prison said the same thing. Showing us the "daily state book" used to record the number of inmates coming and leaving prison each day, he lamented that there was no information on the length of stay. But when a team from the Attorney General's office, the Lagos-based CLEEN Foundation, and Harvard University examined the remand and "production warrants" that accompany inmates conveyed from prison to court, we noticed the date of admission typed just above the signature of the judge, and the dates of all court hearings written in red ink on the reverse side, along with the date on which the inmate left Ikoyi. That was all the information needed to measure length of stay.

[3] See, for example, Anthony Nwapa, "Building and Sustaining Change: Pretrial Detention Reform in Nigeria," *Justice Initiatives*, Open Society Institute, 2008. See also J Nnamdi Aduba and Emily Alemika, "Bail and the Criminal Justice Administration in Nigeria," pages 85-109 (chapter 5) in *The Theory and Practice of Criminal Justice in Africa*, Monograph no. 161, 2009, Institute for Security Studies, Pretoria, South Africa.

[4] Defendants are sometimes remanded into custody by magistrates' courts with no jurisdiction to try defendants. Known colloquially as a "holding charge, this practice is unconstitutional according to an unpublished legal brief by the Director of Public Prosecution in 2009. It appears to contravene Article 27 of the Police Act, and is not recognized in the 2007 Law on the Administration of Justice.

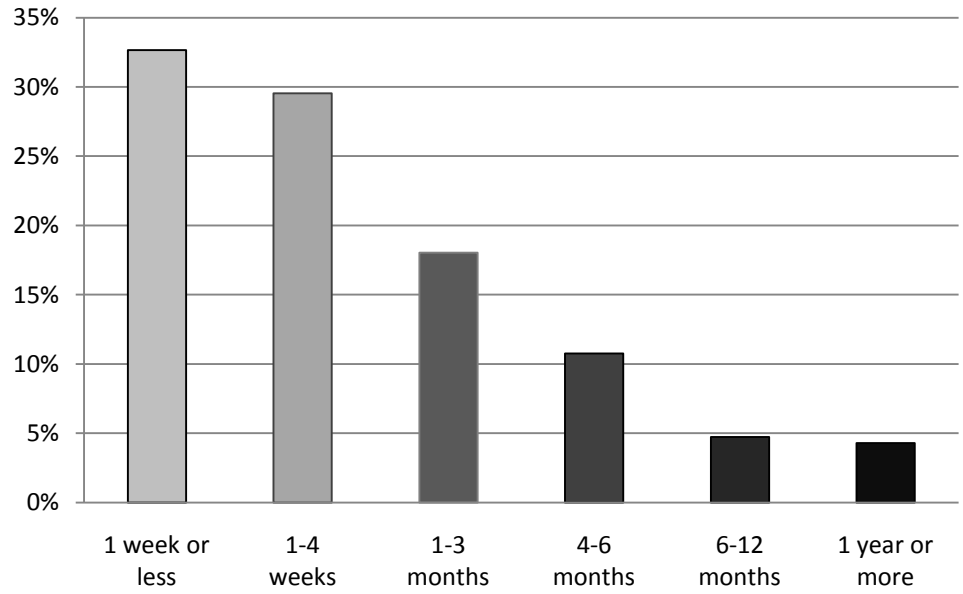
Figure 6. Data Collection Instrument, Ikoyi Prison Exit Sample, 2010

Charge Number	Prisoner Number	Remand Warrant Date	Remand Court	Arrest Charge (Narrative)	Criminal Code Section (or other statute)	Bail Amount	Date of Next Calendared Hearing	Date of Next Court Appearance (actual)	Name of Release Court	Exit Date	Exit Reason (Bail, Acquittal, Dismissal,(etc)
Ep/50/2010	F4378/2010	14/9/2010	Mgt Cour Epe	felony to commit assault,	516.351	No amount	28/9/2010	14/9/2010	Mgt Cour Epe	14/9/2010	bail perfected
G/68/2010	F4610/2010	28/9/2010	C7 Ebutemetta	conspiracy, stealing	516.390	100,000 with two	17/11/2010	28/9/2010	C7 Ebutemetta	28/9/2010	struck out
G/68/2010	F46/11/2010	28/9/2010	C7 Ebutemetta	conspiracy,forgery	430	100,000 with two	11-03-2010	28/9/2010	C7 Ebutemetta	28/9/2010	bail perfected
Mcs/237/2010	F4433/2010	20/9/2010	C12 Shomolu	Affray	83	50,000 with one s	15/10/2010	21/9/2010	C12 Shomolu	21/9/2010	discharged
P/65/2010	F4528/2010	23/9/2010	c14 Tinubu	conspiracy,beach of peac	516,81	500,000 with two	10-11-2010	24/9/2010	c14 Tinubu	24/9/2010	bail perfected
P/65/2010	F4528/2010	23/9/2010	c14 Tinubu	conspiracy,beach of peac	516,81	500,000 with two	10-11-2010	24/9/2010	c14 Tinubu	24/9/2010	acquitted
K/72/2010	F4484/2010	21/9/2010	C9 Tinubu	conspiracy, breach of pea	516,	50,000 with two s	14/10/2010	22/9/2010	C9 Tinubu	22/9/2010	fine paid
H/69/2010	F4635/2010	29/9/2010	C11 Ebutemetta	unlawful damage, breakin	411.451.390	100,000 with two	27/10/2010	30/9/2010	C11 Ebutemetta	30/9/2010	struck out
MCs/240/2010	F4593/2010	28/9/2010	C12 Shomolu	conspiracy,stealing	516.390	200,000 with two	18/10/2010	29/9/2010	C12 Shomolu	29/9/2010	bail perfected

From the records room, the warden retrieved the warrants of all inmates that left Ikoyi in January, March, May, July, and September 2010. For each inmate, the team entered into an excel spreadsheet the date of entry and exit, along with basic identifying information, such as the inmate's prisoner number, the charge, the name of the court that remanded and released the defendant, the amount of bail, if required, and the official reason for the inmate's departure (bail, case struck out, discharged, acquitted, etc). A two person team from CLEEN and the Attorney General's office took ten days to code information for all 1608 exits. The team soon became proficient with data entry, requiring less than five minutes, on average, to enter the relevant information for each exiting inmate into the data collection instrument shown in Figure 6.

Subtracting the number of days between prison admission and exit, we found that the majority of inmates spend short periods of time in detention. The average length of stay for all inmates was 73.4 days. The median length of stay was just 19 days, since most inmates stayed very short periods of time. Indeed, as Figure 7 shows, one third of detainees went home within a week, the vast majority released on bail. Another 29 percent left in the next three

Figure 7. Percentage of Inmates Leaving Ikoyi Prison, by Selected Time Intervals



weeks. Most of the remaining detainees spent relatively short periods of time in custody, too: 18 percent stayed 1-3 months, 11 percent stayed 4-6 months, and 5 percent stayed 6 and 12 months. Just 4 percent remained in custody more than a year, a proportion similar to those kept in custody for 6 to 12 months.

Justice officials in Lagos were surprised by the findings. Some prison officials were perplexed because inmates with whom they were familiar or saw on a daily basis were individuals who had stayed in custody a long time, leaving the impression that a majority of inmates spend lengthy periods in detention. But the churn of inmates, the high volume of rapid turnover in the prison, was confirmed by the repetition of the exit sample every two months: for each of the months that we analyzed exits, at least fifty percent of inmates left prison within a month of their arrival.

From Research Results to Prototype Indicators

The results of the exit samples are not indicators themselves. Just as research findings are not automatically converted into insights or conclusions, the results of the exit samples require interpretation. They also raise difficult questions. If most defendants are released soon after they enter prison, how could the duration of detention be reduced any further? Could justice officials realistically improve upon this result? If so, what would be the value of accelerating the already rapid rate at which most detainees leave prison? Would activities that reduce the duration of detention significantly reduce prison overcrowding? What measure of the duration of detention would best work as an indicator, and who would lead the effort?

The selection of an indicator and also the identification of appropriate reform strategies involve a careful calibration of purpose and power. The Attorney General in Lagos does not control the police or courts or prisons, so he must use indicators such as the median length of detention to remind other officials to pay attention to the duration of detention and exhort them to avoid compromising system-level goals in the pursuit of institutional objectives. In addition, to demonstrate leadership on the problem of pretrial detention, he wanted to select

Figure 8. Duration of Detention by Type of Release and Jail Bed Consumption, Ikoyi Prison, 2010

Release Type	Number of Defendants in Sample	Percent of Sample	Average Length of Stay (days)	Median Length of Stay (days)	Total Number of days in Custody	Percent of all days in Custody
Acquitted	2	0,1%	115	115	230	0,2%
Other*	9	0,4%	413	269	5750	5,0%
Withdrawn	18	1,1%	122	108	2187	1,9%
Jail term completed	20	1,2%	92	41	1845	1,6%
Fines Paid & Discharged	50	3,1%	6	2	317	0,3%
Discharged	76	4,7%	159	43	12064	10,4%
Struck out	258	16,1%	111	61	28574	24,7%
Bail Perfected	1171	73,1%	63	13	64655	55,9%
Total**	**1604**	**100%**	**70,2**	**19**	**115622**	**100,0%**

*includes: no exit information, bench warrant rescinded, case dismissed, life imprisonment, transfer
** For four cases we were unable to determine the release type.

a particular problem whose resolution could be affected with existing resources by prosecutors, a justice function he controlled somewhat more directly than others, though most prosecutions in Nigeria are the responsibility of the police.

The way defendants leave prison provided a clue for the choice of an indicator that prosecutors (whether police or the DPP) might move. As the data in Figure 8 show, defendants whose prosecutions were "withdrawn" remained in detention, on average, nearly twice as long as those who perfected bail (121 vs 63 days). Defendants whose cases were "struck out" – that is, dismissed by a court – also stayed in jail nearly twice as long (111 days). Together, the 17 percent of defendants that left prison after their cases were struck out or withdrawn used 27 percent of all the days in custody in our sample.

Because these outcomes are likely susceptible to the influence of a prosecutor, the duration of detention for inmates leaving prison after their cases are withdrawn or struck out is likely to be a good indicator. It is aligned with a government function that can improve it. In Nigeria, however, this prosecutorial function is itself divided. The DPP staff only influence decisions about charge for suspects in murder and armed robbery cases, and a small subset of defendants charged with theft. A majority of the defendants in our sample were charged with stealing, simple assault, and breaches of public order – offenses prosecuted by the police. The Attorney General therefore could only recommend that police more closely supervise the investigators in these cases to reduce these times, while setting an example for the police by focusing on the small number of cases under his control.

The Duration of Prosecution

One of the few justice functions exclusively under the control of the Attorney General is the filing of legal advice, a prerequisite for charging defendants in court with offenses punishable by more than two years imprisonment. Influenced by the findings from the prison exit samples, the Attorney General's office decided to find out how long it took to file such advice. With a modified version of the data collection instrument used for the prison exit sample, the AG's office recorded the dates for each step of the criminal process in the 48 cases the DPP completed in 2009. It discovered that it took prosecutors 142 days on average to file legal advice. While this was a negligible share of the overall amount of time between the commission of a crime and the verdict of a court – which averaged more than 4 years -- the process was still remarkably slow and, he believed, unjustified. Resolved to fix the problem, the AG's office instituted a "tracking device" to measure the number of days that elapse between each phase of the process of filing advice. The Solicitor General recommended to the DPP that the total period of time required to complete this task should not exceed 30 days as anticipated by provisions of the Administration of Criminal Justice Law of 2007. An indicator was born.

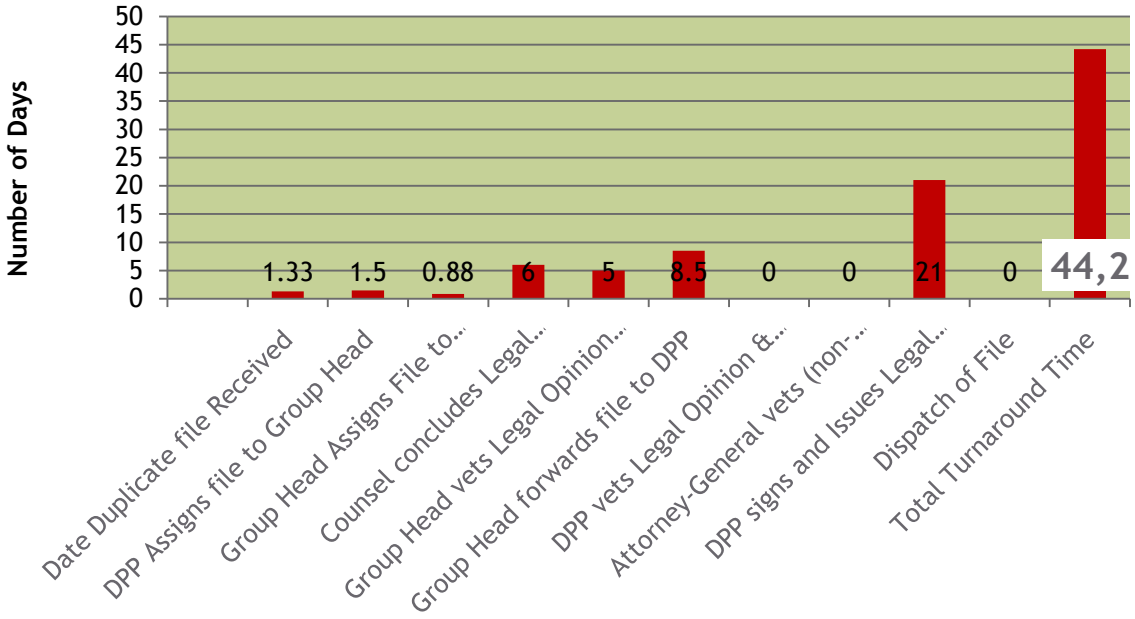
Between May and August 2010, the Attorney General and DPP regularly reviewed the number of days it took to file legal advice in the robbery and homicide cases forwarded to them by the Criminal Investigations Division of the Lagos State Police. They also agreed to eliminate some of the multiple layers of review of draft opinions – extra steps that may have added accountability and quality assurance at the expense of timeliness. In just three months, the amount of time required to file legal advice fell threefold. As Figure 9 shows, for cases in which prosecutors filed legal advice in August 2010, the "turnaround time" was just 44 days.

These improvements are important in the cases they affect, but they are symbolic in the larger effort to reduce pretrial detention. To convert these prototypes into active indicators, used by officials to reduce pretrial detention, the Attorney General will need to engage the police prosecutors and their superiors.

The Duration of Detention for Long-Term Stays

Prison crowding in Lagos has, we now know, multiple sources: a large number of defendants spending relatively short periods of time in detention; a smaller but sizeable number of defendants whose charges are dismissed, withdrawn, or struck out after more than three months of incarceration; and a very small number of defendants who remain in prison a very long time before their cases are resolved. All of these contributors to crowding require their own indicator and remedial strategy.

Figure 9. Turnaround Time for Filing Legal Advice, DPP, Lagos, August 2010



Defendants who spend extended periods of time in detention are a special concern because of the consequences of prolonged detention for their health, the impact on the congestion of the court calendar, and the repercussions for the reputation and legitimacy of the criminal justice system. They also have a disproportionate impact on the extent of crowding. Calculations from the exit samples at Ikoyi Prison show that the four percent of suspects that remained in detention for a year or more accounted for almost half (47.5 percent) of the prison space occupied over time. Completing all of the long term cases (those that have already kept a suspect in detention for a year) before the end of another six months in detention would reduce the remand population by 17 percent. Such a reduction would augment considerably the strategies already devised by the Attorney General and Director of Criminal Investigations in Lagos. Only with the participation of the judiciary, however, could a strategy be devised to achieve that goal. The Attorney General and his staff hope to enlist that participation by convening a quarterly interagency meeting of managers, each armed with an indicator they design. It is in these kinds of empirically informed meetings that meaningful conversations about law and justice can have special force.

Standard Indicators and International Standards

There are many ways one could measure the extent of pretrial detention, in Nigeria or any country. We have focused here first on the most common measures, based on the population in detention on a given day, and then on duration, a measure especially well suited to pretrial reform efforts. There are other possibilities, such as the flow of suspects into detention. When calculated from prison or jail data, this produces an indicator of the number of detainees beginning their pretrial detention each week, month, or year. When calculated from court data, it produces an indicator of persons detained as a percentage of all accused persons bound over for trial. Another possible indicator is the percentage of prosecutorial requests for detention that are granted, or the percentage of defense requests for release that are granted; but both of these require comprehensive data on prosecution and defense requests that are rarely available. We have focused here on indicators of the duration of pretrial detention not because they are always preferable to these other measures, but because they are especially useful and practical for reform efforts. The administrative data required are usually available by sampling exits from detention;

the resulting indicators focus attention on an aspect of pretrial detention that prosecutors, judges, and court administrators can control; and they directly measure one of the major sources of pretrial injustice: prolonged detention without trial.

There is no hard international standard against which the duration of detention can be assessed. As international courts and conventions recognize, what constitutes "prolonged" detention, "unreasonable" delay, or "speedy" trials depends both on the complexity of the case and on the normative context. Three months may be "prolonged" in some cases, while six months may be "reasonable" in others, but the longer the period of detention without trial, the greater the affront to justice and the affront is greater still when the conditions of detention are severe, the charges minor, or the evidence entirely untested. For those reasons, domestic governments, international development agencies, and advocates alike could use a standard way of measuring this duration, whatever the meaning ascribed to the results. Standard indicators, in this field at least, are undoubtedly preferable to international standards, encouraging internationally informed domestic conversations about the meaning of justice rather than mimicry of foreign practices. Prison exit samples represent one method of generating a standard indicator of the duration of detention and thereby encouraging that domestic discourse on justice. The method could be replicated in multiple countries and in multiple facilities, placing the domestic conversation about the reform of detention on a sound empirical footing while furnishing international agencies with some genuinely comparable indicators.

Todd Foglesong *is a Senior Research Associate at the Program in Criminal Justice Policy and Management, John F. Kennedy School of Government, Harvard University.*
Christopher E. Stone *is the Daniel and Florence Guggenheim Professor of the Practice of Criminal Justice, John F. Kennedy School of Government, Harvard University.*

Program in Criminal Justice Policy and Management
Harvard Kennedy School
79 JFK Street
Cambridge, MA 02138

+1 617 495 5188

www.hks.harvard.edu/criminaljustice